IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

MACA.No. 2165 of 2006()

OPMV.814/2001 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA

.....

: APPELLANT/3RD RESPONDENT

UNITED INDIA INSURANCE COMPANY LTD.,
REP.BY ITS ASST. MANAGER, REGIONAL OFFICE,
SHARANYA, HOSPITAL ROAD, KOCHI-11.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS: PETITIONER & RESPONDENTS 1 & 2:

----

1. P.A.VARGHESE,S/O.ANTONY,
PUNNAKAL HOUSE, ARTHUNKAL P.O., CHERTHALA.

2. K.SABU, PUNNACKAL,
72/X, CHERTHALA SOUTH PANCHAYAT,
ARUTHUNKAL P.O., CHERTHALA.

3. SHIJI, S/O.EYOCHEN,
NADUVILAPARAMBIL, THUMPOLI P.O.,
ALAPPUZHA.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

==========

M.A.C.A. NO. 2165 OF 2006

==========

Dated this the 29th day of June, 2007

J U D G M E N T

Third respondent-Insurer in O.P(MV) No.814 of 2001 on the file of the Motor Accidents Claims Tribunal, Alappuzha is the appellant. Appeal is filed challenging the award passed by the Tribunal by which the Tribunal directed the appellant to pay the compensation awarded.

2. First respondent-petitioner filed an O.P. claiming compensation against respondents 2 and 3 and appellant. It was alleged that first respondent was a pillion rider in a motor cycle bearing Reg.No.KL-4/G-6470. When the vehicle reached south of Arthunkal Church, it hit against a person. First respondent fell down from the vehicle and sustained injuries.

3. He filed the Original Petition claiming compensation. Owner and driver of the vehicle did not appear and contest the case. Appellant alone contested the case. It was admitted that the motor cycle was covered with a valid policy of insurance. Tribunal found that the accident occurred due to

the negligence of the rider of the motor cycle and first respondent is entitled to a compensation of Rs.17,500/-. Appellant-Insurer was directed to pay the said amount. Challenging that part of the award, this appeal is filed.

4. The only challenge in this appeal is regarding the liability of the Insurer to indemnify the insured. Admittedly first respondent was a pillion rider. He produced copy of the policy which was marked as Exhibit A11. According to the appellant though the policy issued is a comprehensive one, no additional premium was collected and as such the pillion rider is not entitled to any compensation from the company. Appellant relies on the decision reported in United India Ins. Co. Ltd. v. Thilak Singh (2006 (4) SCC 404) in support of its contention wherein it is held that Insurer is not liable to compensate the insured for any injuries sustained by the pillion rider unless additional premium was collected. This aspect of the case was not considered by the Tribunal which requires reconsideration by the Tribunal. For that limited purpose the case has to go back.

5. In the result, appeal is allowed. The findings that

the accident occurred due to the negligence of the driver of the motor cycle and the first respondent is entitled to a sum of Rs.17,500/- as compensation are confirmed. But the award passed by the Tribunal by which the appellant was directed to pay the compensation alone is set aside. The Tribunal is directed to take O.P(MV) No.814 of 2001 back to file and dispose of the same afresh in accordance with law on the question of liability of the Insurer. It is open to the parties to adduce further evidence, if so advised.

6. Parties are directed to appear before the Motor Accidents Claims Tribunal, Alappuzha on 31.7.2007.

Interlocutory Application No.2410 of 2007 will stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

==========

M.F.A.

==========

J U D G M E N T

29TH JUNE, 2007